

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 01/20/2016  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2015-00468466-CU-BC-VTA  
CASE TITLE: DOPPEL VS BURCH

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Demurrer (CLM)  
CAUSAL DOCUMENT/DATE FILED: Demurrer, 11/25/2015

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With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

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**The court's tentative ruling is as follows:**

**Sustain the demurrer to the 1<sup>st</sup> cause of action without leave to amend. Grant the Request to stay the 2<sup>nd</sup> cause of action until the resolution of the probate case. Set a status conference in 6 months (or so) to allow the parties to inform the Court of the status of the probate case.**

**Discussion:**

*First Cause of Action (breach of oral contract):*

The elements of breach of contract are "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388. Plaintiff alleges a contract between herself and the decedent Schnepf; *not with the* Trust or the trustees. Probate Code §9351 requires that prior to commencing an action against a decedent's personal representative on a cause of action against the decedent; the party must first file a claim against the estate in probate court. The demurrer to the first cause of action is sustained without leave to amend.

**Motion to Stay**

A trial court has the inherent power to stay an action. See CCP §128(a) "Every court shall have the power to do all of the following: [...] (3) To provide for the orderly conduct of proceedings before it, or its officers." A stay of proceedings is an equitable remedy, the issuance of which rests in the Court's discretion. (See, e.g., *Webster v. Sup. Ct.* (1988) 46 Cal. 3d 338, 345.) "Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)

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The second cause of action here is a professional negligence claim. The elements of a cause of action for negligence

are well established; (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." (*Ladd v. Cnty. of San Mateo* (1996) 12 Cal. 4th 913, 917 (internal citation omitted).) On the issues of damages and causation, they cannot be established until the merits of the 1<sup>st</sup> c/a (breach of contract) have been resolved. To not stay this action would seem to invite the possibility of inconsistent judgments. As Defendants note in their Reply, "Only if the money is unrecoverable [from the estate] due to an alleged error by the attorney should Plaintiff be permitted to pursue a claim for damages against Defendant Anderson." Whether Plaintiff is successful in the probate action will necessarily impact causation and damages. Given the absence of any claim of prejudice if the requested stay is granted, the Court finds that a stay is in the interests of justice and grants the request.